



Paper No. 18

MINTZ LEVIN COHN FERRIS GLOVSKY AND POPEO PC
12010 SUNSET HILLS ROAD
SUITE 900
RESTON, VA 20190

COPY MAILED

JUN 06 2003

OFFICE OF PETITIONS

In re Application of :
Didomenico et al. : DECISION ON PETITION
Application No. 09/704,565 :
Filed: November 3, 2000 :
Attorney Docket No. 47382.000110 :

This is a decision on the "Petition under 37 C.F.R. § 1.53(e)," filed October 10, 2002, requesting that the above-identified application be accorded a filing date of November 3, 2000.

Application papers in the above-identified application were received on November 3, 2000. A review of the record reveals that these papers did not include drawings; however, as the application contained "method" claims, the Office of Initial Patent Examination (OIPE) accorded the application papers a filing date¹. A filing receipt was mailed to applicants, stating that the application had been accorded a filing date of November 3, 2000 with "0" drawings present in the application.

In response, applicants filed a request for corrected filing receipt. By Notice mailed October 1, 2002, the Office advised applicants that a Notice mailed May 23, 2002 granting this request was withdrawn as sent in error. A request to correct a filing date by request for corrected filing receipt is improper. Moreover, the October 1, 2002 mailing included a "Notice of Incomplete Nonprovisional Application," notifying applicants that the application papers had not been accorded a filing date because the application was deposited without drawings, and stating that a request for review of this notification was by way of petition.

Petitioner timely responded with the instant petition (and petition fee). Petitioner asserts that two (2) sheets of drawings were submitted with the original application that was filed on November 3, 2000. In support thereof, petitioners submitted a copy of their date-stamped postcard receipt.

A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the Office of all items listed thereon on the date stamped thereon by the Office. See MPEP 503. A review of the postcard receipt reveals that: 1) it was date stamped as received in the USPTO on November 3, 2000, 2) it specifically identifies the items being filed, including "Drawings (2 sheets) labeled Figures 1 and 2," and 3) it lacks any annotation of nonreceipt of

¹ It has been USPTO practice to treat an application that contains at least one process or method claim as an application for which a drawing is not necessary for an understanding of the invention under 35 U.S.C. 113 (first sentence). See MPEP 601.01(f).

any item denoted on the postcard. Thus, petitioners have shown that the items denoted, including the 2 sheets of drawings, were filed on November 3, 2000.

Accordingly, the petition is **GRANTED**.

Given the basis for granting the petition, the petition fee is being refunded to Deposit Account No. 50-0311, as authorized.

The application is being forwarded to the Office of Initial Patent Examination (OIPE) for:

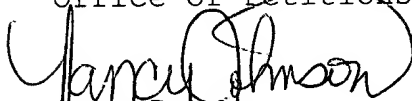
- further processing with a filing date of November 3, 2000, using the application papers received in the Office and presently accorded that date; and figures 1-2 resupplied on petition filed October 10, 2002.

Applicant will receive appropriate notifications regarding the fees owed, if any, and other information in due course from OIPE.

Telephone inquiries related to this decision should be directed to Petitions Attorney Nancy Johnson at 703-305-0309.



Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions



Nancy Johnson
Petitions Attorney
Office of Petitions